

PUC E-017/GR-10-239

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Otter
Tail Power Company for Authority to
Increase Electric Service Rates in
Minnesota

PROTECTIVE ORDER

The purpose of this Protective Order ("Order") is to facilitate the disclosure during the course of these proceedings of documents and information claimed by a producing party to contain trade secret and privileged information ("Trade Secret Information" or "Nonpublic Data"). Access to, review of, and use of Trade Secret Information or Nonpublic Data by parties shall be strictly controlled by the terms of this Order.

The parties, other than government agencies, are referred to below as parties, persons or entities.

1. The government agencies with access to Trade Secret Information and Nonpublic Data, include the Minnesota Public Utilities Commission ("Commission"); the Office of Administrative Hearings ("OAH"); the Office of the Attorney General ("OAG"); the Minnesota Department of Commerce, Office of Energy Security ("OES"); the Office of the Attorney General-Residential and Small Business Utilities Division ("OAG-RUD"); the Minnesota Department of Administration ("Administration"); Office of Enterprise Technology ("OET") and the Minnesota State Historical Society. These agencies are subject to various laws and rules, including the Minnesota Government data Practices Act ("MGDPA"), the records retention requirements of Minn. Stat. §§ 138.163-138.226, and agency-specific rules and procedures, such as the Commission's September 1, 1999, *Revised Procedures for Handling Trade and Privileged Data* (Commission's Procedures).

2. This matter was referred to the Office of Administrative Hearings by the Commission for a contested case hearing in its Notice and Order for Hearing issued on May 27, 2010, in the above-entitled docket.

3. During the proceedings in this matter, Parties may file, request and use trade secret information or nonpublic data, as defined by Minnesota Statutes § 13.01 *et. seq.*

4. Minnesota Statutes § 14.60, subdivision 2, authorizes the Administrative Law Judge in a contested case to conduct a closed hearing to discuss trade secret or nonpublic data, issue necessary Protective Orders, and seal all or part of the hearing record.

IT IS HEREBY ORDERED:

1. (a) Trade Secret Information and Nonpublic Data. All Nonpublic Data, including Trade Secret Information, shall be furnished pursuant to the terms of this Protective Order, and shall be treated by all persons accorded access thereto pursuant to this Protective Order as constituting confidential, competitive, trade secret, and business information, and shall be used solely for the purpose of this proceeding and solely in accordance with this Protective Order. Material that is covered by this Order shall not be used or disclosed for any other purpose. In accordance with the Commission's Procedures, all documentary material claimed to be Trade Secret Information or Nonpublic Data shall be marked substantially as follows by stamping each individual page with the designation "**NONPUBLIC DOCUMENT-CONTAINS TRADE SECRET INFORMATION-NONPUBLIC DATA.**" Any Trade Secret Information or Nonpublic Data received in photographic, digital or electronic formats shall be identified as protected by the producing party by means appropriate to the medium and shall be handled by the recipient in a manner suitable to protect its confidentiality.

(b) Use of Trade Secret or Nonpublic Data and Person Entitled to Review. All Trade Secret or Nonpublic Data made available pursuant to this Protective Order shall be given solely to counsel for the requesting party or other authorized persons who are designated by counsel as being the party's experts or witnesses in this proceeding and who execute Exhibit A in a timely manner prior to their receipt of the Trade Secret Information and/or Nonpublic Data. Trade Secret Information and/or Nonpublic Data shall not be used or disclosed except for purposes of this proceeding and as needed for all subsequent appeals of the final order in this proceeding. The Trade Secret Information and/or Nonpublic Data may not be used or referenced in other proceedings in Minnesota or in other jurisdictions. Unless otherwise provided in the Protective Order, all Trade Secret Information will be safeguarded and handled in accordance with the Commission's Procedures.

(c) Nondisclosure Protective Order. Prior to giving access to Trade Secret Information and/or Nonpublic Data as contemplated in paragraphs (a)-(b) above to any expert or witness, whether or not such expert or witness is a person designated to testify in any such proceeding, counsel for the party seeking review of the Trade Secret Information and/or Nonpublic Data shall deliver a copy of this Protective Order to such person; and prior to disclosure such person shall agree in writing to comply with and be bound by this Protective Order. In connection therewith, Trade Secret Information and/or Nonpublic Data shall not be disclosed to any person who has not signed a Nondisclosure Agreement in the form which is attached hereto and incorporated herein as Exhibit A and until the 48-hour notice required by this paragraph has been given. The Exhibit A Nondisclosure Agreement shall require the person to whom disclosure is

to be made to read a copy of this Protective Order and to certify in writing that he or she has reviewed the same and has consented to be bound by its terms. The Nondisclosure Agreement shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. Such Nondisclosure Agreement shall be delivered to counsel for the providing party at least 48 hours, excluding weekends and holidays, prior to the expert or witness gaining access to the Trade Secret Information and/or Nonpublic Data. If counsel for the providing party notifies the Administrative Law Judge of an objection within the 48 hours, no Trade Secret Information and/or Nonpublic Data shall be provided to the expert or witness until so ordered by the Administrative Law Judge.

2. Government Agencies. The government agencies are not subject to the terms of this Protective Order except, while this matter is pending before the OAH and as to matters within the jurisdiction of the OAH, government agencies are subject to this Paragraph 2.

(a) Definition of Trade Secret Information and Nonpublic Data. "Trade Secret Information and Nonpublic Data" shall be limited to "trade secret information" as defined at Minn. Stat. § 13.37, subd. 1(b), "nonpublic data" as defined at Minn. Stat. § 13.02, subd. 9, and "private data on individuals" as defined in Minn. Stat. § 13.02, subd. 12. This definition applies to both government agencies and parties.

(b) Conflicts. To the extent this Protective Order conflicts with or omits a matter otherwise required by either MGDPA or Commission Procedures, the requirements of the MGDPA or Commission Procedures shall control. Any provision of the Protective Order not consistent with paragraph 2 shall be of no effect with respect to the government agencies.

(c) Experts. A government agency may not provide Trade Secret Information and Nonpublic Data to outside experts providing assistance on this matter until the outside experts have signed Exhibit "A". Said experts shall comply with the terms of the Protective Order except where contrary to the requirements of the MGDPA or Commission Procedures.

(d) Challenge to Trade Secret Designation. The Administrative Law Judge, upon a request by or to any party or government agency, and ten (10) days prior to notice or such period as is determined by the Administrative Law Judge, may hold a hearing *in camera* and remove a designation of Trade Secret Information and Nonpublic Data.

(e) Verbal Disclosure. Trade Secret Information and/or Nonpublic Data may be verbally disclosed by government agencies during depositions or hearing in this matter upon prior notice to and agreement of the disclosing party or authorization by the Administrative Law Judge.

(f) Transcripts. Each disclosing party or government agency may identify portions of depositions or hearing transcripts that disclose Trade Secret Information

and/or Nonpublic Data for up to three business days after the transcript is made available to them, and the court reporter shall mark those portions of the transcript **"TRADE SECRET INFORMATION-NONPUBLIC DATA,"** consistent with the Commission's Procedures.

3. Challenge to Non-Publicity, Trade Secret Designation or Other Special Requests. This Protective Order shall not be construed as a ruling on the discoverability, confidentiality or trade secret designation of any information or document. While this matter is pending before the OAH, any party at any time upon ten (10) days prior notice may seek by appropriate pleading to have documents or other matters that have been designated as Trade Secret Information and Nonpublic Data removed from the protective requirements of this Protective Order or to have them handled in a manner differently than described in this Protective Order (either for greater or lesser confidentiality protections). If the trade secret or nonpublic nature of this information is challenged, resolution of the issue shall be made by the Administrative Law Judge after proceedings *in camera* which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such trade secret or nonpublic matter shall be present. The record of such *in camera* hearings shall be marked **"TRADE SECRET INFORMATION-NONPUBLIC DATA,"** unless the ALJ determines that the proceeding should not be classified as involving Trade Secret Information and Nonpublic Data.

4. Use of Trade Secret Information and/or Nonpublic Data in Comments or Pleadings. Where reference to Trade Secret Information and/or Nonpublic Data is required in pleadings, cross-examinations, briefs, argument or motions, it shall be by citation of title or exhibit number or by some other nonconfidential description. Any further use of or substantive references to Trade Secret Information and/or Nonpublic Data shall be placed in a separate "Nonpublic" copy of the pleading or brief and submitted to the Commission or Office of Administrative Hearings pursuant to the terms of the Commission's Procedures. This "Nonpublic" copy shall be served only on counsel of record (one copy each) who have signed a Nondisclosure Agreement. All the protections afforded in this Protective Order apply to materials prepared and distributed under this paragraph.

5. Use of Trade Secret Information and/or Nonpublic Data in Depositions. If, in the course of depositions, counsel for any party concludes that testimony or exhibits will involve Trade Secret Information and/or Nonpublic Data, counsel shall request that the court reporter record such testimony in a confidential transcript that is marked **"TRADE SECRET INFORMATION-NONPUBLIC DATA."** All exhibits which have been marked as involving Trade Secret Information and/or Nonpublic Data shall be attached to the confidential transcript and marked consistent with the Commission's Procedures. Each party has the right to identify a transcript or exhibits as including Trade Secret Information and/or Nonpublic Data pursuant to this paragraph for up to three business days after the deposition is completed.

6. Use of Trade Secret Information and/or Nonpublic Data in Hearings. The Receiving Party shall not use Trade Secret Information and/or Nonpublic Data in a

hearing without first (a) providing prior notice to the disclosing party regarding the information to be used and (b) conferring with the disclosing party regarding limitations or procedures that can be used to avoid disclosing the confidential aspects of the information at issue to persons not otherwise entitled to receive such information. If the parties cannot reach agreement regarding the use of such information, then the dispute shall be submitted to the Administrative Law Judge or the Commission before the information is used or publicly disclosed. Without limiting the foregoing, no party shall refer to Trade Secret Information and/or Nonpublic Data on oral testimony, cross-examination or argument except in accordance with this paragraph.

7. Public Summaries. To the extent required by the Commission's Procedures, the providing party shall prepare a written summary of the Trade Secret Information and/or Nonpublic Data referred to in this Order to be placed on the public record.

8. Return. Unless otherwise ordered, all Trade Secret Information and/or Nonpublic Data, including transcripts of any depositions to which a claim of "trade secret" or "nonpublic" status is made, shall remain under seal, shall continue to be subject to the protective requirements of this Protective Order, and, except as provided in Paragraph 10, shall be returned to counsel for the disclosing party within 30 days after final settlement or conclusion of the applicable matter including administrative or judicial review thereof, unless otherwise agreed by the disclosing party. In the alternative, counsel may certify by letter to the disclosing party, within the same timeframe, that Trade Secret Information or Nonpublic Data have been destroyed.

9. Preservation of Non-Public Information. All persons who may be entitled to receive, or who are afforded access to any Trade Secret Information and/or Nonpublic Data by reason of this Protective Order shall neither use nor disclose the Trade Secret Information and/or Nonpublic Data for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of this proceeding, and then solely as contemplated herein, and shall take reasonable precautions to keep the Trade Secret Information and/or Nonpublic Data secure and in accordance with the purposes and intent of this Protective Order.

10. Highly Confidential Information. During the proceedings in this matter, parties may request Trade Secret Information that is also Highly Confidential Information. Highly Confidential Information is trade secret, non-public information that would benefit the receiving party or any other party to this proceeding in its business operations. If such Highly Confidential Information is requested, any party may request heightened protective measures as necessary regarding the disclosure of the Highly Confidential Information, including, but not limited to identifying particular party representatives who are eligible to receive the Highly Confidential Information and limiting the use of the Highly Confidential Information.

11. Reservation of Rights. The parties hereto affected by the terms of this Protective Order further retain the right to question, challenge, and object to the admissibility of any and all data, information, studies, and other matters furnished under

the terms of this Protective Order in response to interrogatories, requests for information or documents or cross-examination on the grounds of relevancy or materiality.

12. Inadvertent Disclosure. No party shall have waived its right to designate any documents, data, information, studies, or other materials as Trade Secret Information and/or Nonpublic Data by inadvertent disclosure, provided the disclosing party thereafter gives written notice to the recipients(s) of such information that it should have been designated as Trade Secret Information and/or Nonpublic Data. From and after receipt of such notice, the previously disclosed information subsequently identified as Trade Secret Information or Nonpublic Data shall be treated as Trade Secret Information or Nonpublic Data for purposes of this Protective Order.

13. Disclosure of Trade Secret/Nonpublic Data to Unauthorized Person. If material(s) designated as Trade Secret Information and/or Nonpublic Data is disclosed by a party to any person other than those entitled to disclosure in the manner authorized by this Protective Order, the party responsible for the disclosure shall immediately upon learning of such disclosure inform the designating party in writing and by telephone call of all pertinent facts relating to such disclosure and shall make every effort to prevent further disclosure by the unauthorized person(s). The disclosing party shall use its best efforts to retrieve the documents and/or tangible things from the unauthorized recipients. The parties thereafter shall informally attempt to resolve the matter promptly. If the parties are unable to resolve the issue, a party may file a motion with the Administrative Law Judge for relief with notice to the parties of record. This Protective Order shall not abrogate or diminish any contractual, statutory, or other legal obligation or right of any party with respect to the improper release of Trade Secret Information and/or Nonpublic Data.

Dated: June 30, 2010

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Otter
Tail Power Company for Authority to
Increase Rates for Electric Service in
Minnesota

EXHIBIT A
NONDISCLOSURE AGREEMENT

I, the undersigned, hereby acknowledge that I have read the attached Protective Order dated June 23, 2010, in Minnesota Public Utilities Commission Docket No. E-017/GR-10-239, OAH Docket 3-2500-21343-2, and understand the terms thereof and agree to be bound by all such terms.

I agree not to disclose to any person or entity not authorized to receive materials designated **“TRADE SECRET INFORMATION-NONPUBLIC DATA”** under the terms of said Protective Order, or any copies or extracts of information derived therefrom, which have been disclosed to me. I further agree to use any such materials disclosed to me solely for the purpose of this proceeding and for no other purpose.

I hereby submit myself to the jurisdiction of the Office of Administrative Hearings in Minnesota and the Minnesota Public Utilities Commission for the purpose of enforcing the Protective Order.

Date: _____, 2010

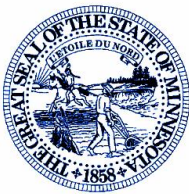
Signature

Type or Print Name

Address

Name of Employer

Name of Party



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street
Saint Paul, Minnesota 55101

Mailing Address:
P.O. Box 64620
St. Paul, Minnesota 55164-0620

Voice: (651) 361-7900
TTY: (651) 361-7878
Fax: (651) 361-7936

June 30, 2010

To All Parties on the Service List Attached to the Certificate of Service	
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Re: *In the Matter of the Application of Otter Tail Power Company for
Authority to Increase Electric Service Rates in Minnesota*
OAH Docket No. 3-2500-21343-2; PUC E-017/GR-10-239

Dear Parties:

Enclosed herewith and served upon you by mail is the Administrative Law
Judge's Protective Order in the above-entitled matter.

Sincerely,

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Telephone: (651) 361-7848

KDS:nh

Encl.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW SECTION
600 NORTH ROBERT STREET
ST. PAUL, MN 55101

CERTIFICATE OF SERVICE

Case Title: <i>In the Matter of the Application of Otter Tail Power Company for Authority to Increase Electric Service Rates in Minnesota</i>	OAH 3-2500-21343-2 PUC E-017/GR-10-239
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Nancy J. Hansen certifies that on the 30th day of June, 2010, she served a true and correct copy of the attached Protective Order, by serving it according to the following Service List:

Assigned Service List Members - Windows Internet Explorer

https://www.edockets.state.mn.us/EFiling/filing/filing.do?method=viewPrintUniqueServiceListMembers

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Electronic Service Member(s)

Last Name	First Name	Email	Company Name	Delivery Method	View Trade Secret
Anderson	Christopher	canderson@alle.com	Minnesota Power	Electronic Service	No
Anderson	Julia	Julia.Anderson@state.mn.us	Office of the Attorney General-DOC	Electronic Service	Yes
Bailey	Thomas	tbaily@briggs.com	Briggs And Morgan	Electronic Service	No
Ferguson	Sharon	sharon.ferguson@state.mn.us	Department of Commerce	Electronic Service	Yes
Franklin	Michael	mfranklin@chamber.com	Minnesota Chamber Of Commerce	Electronic Service	No
Gaugler	Sherry	sherry.gaugler@comcast.net	Jeffrey C. Paulson & Associates, Ltd.	Electronic Service	No
Gertardson	Bruce	bgertardson@qcpoo.com	Offer Tail Corporation	Electronic Service	No
Gilest	Ronald M.	ron.gilest@state.mn.us	Office of the Attorney General-RUD	Electronic Service	Yes
Hear	Burt W.	burt.hear@state.mn.us	Public Utilities Commission	Electronic Service	Yes
Harrington	William	williamh@excelsiorenergy.com	Excelsior Energy, Inc.	Electronic Service	No
Henniker	Shane	shane.henniker@enbridge.com	Enbridge Energy Company, Inc.	Electronic Service	No
Krikava	Michael	mkrivava@briggs.com	Briggs And Morgan, P.A.	Electronic Service	No
Landel	John	jlandel.ed@state.mn.us	Office of the Attorney General-RUD	Electronic Service	Yes
Monick	Bryan	bmonick@qcpoo.com	Offer Tail Power Company	Electronic Service	No
Sheehy	Kathleen D.	kathleen.sheehy@state.mn.us	Office of Administrative Hearings	Electronic Service	Yes
Simon	Marg	mrgsimon@mnenergy.com	Missouri River Energy Services	Electronic Service	No
Strangler, Jr.	Rob	rstrangler@qcpoo.com	Offer Tail Power Company	Electronic Service	No
Stamets	William	bill.stamets@state.mn.us	Office of the Attorney General-RUD	Electronic Service	Yes
Taylor	William	williams.caster@woodsfuller.com	Woods, Fuller, Shultz & Smith P.C.	Electronic Service	No
Thompson	SaGonna	Regulatory.Records@xcelenergy.com	Xcel Energy	Electronic Service	No

Paper Service Member(s)

Last Name	First Name	Company Name	Address	Delivery Method	View Trade Secret
Blaiz	William A.	Minnesota Chamber Of Commerce	Suite 1500, 400 Robert Street North, St. Paul, MN-55101	Paper Service	No
Bradley	Michael	Moss & Barnett	4800 Wells Fargo Ctr, 90 S 7th St, Minneapolis, MN-55402-4129	Paper Service	No
Carling	Tammy	Great River Energy	12300 Elm Creek Blvd., Maple Grove, MN-55369-4718	Paper Service	No
Chesnut	Gary	AG Processing Inc. a cooperative	12700 West Dodge Road, PO Box 2047, Omaha, NE-681032047	Paper Service	No
Clart	Christopher	Xcel Energy	5th Floor, 414 Nicollet Mall, Minneapolis, MN-554011993	Paper Service	No
Consulting	Piedmont	Piedmont Consulting, Inc.	701 4th Ave S Ste 500, Minneapolis, MN-55402	Paper Service	No
Dahler	Derick O.	Auant Energy Services	Suite 300, 200 South 5th Street, Minneapolis, MN-55402	Paper Service	No
Davis	William T.	N/A	24524 West Rivers Bend Road, Fergus Falls, MN-565378101	Paper Service	No
Drew	Jonathan M.	Utility Research	P.O. Box 230, Fergus Falls, MN-56538	Paper Service	No
Erickson	James C.	Kelly Bay Consulting	17 Quechee St, Superior, WI-54880-4421	Paper Service	No
Ganley	Edward	N/A	32 Lawton Street, St. Paul, MN-55102	Paper Service	No
Goodpastor	Elizabeth	MN Center for Environmental Advocacy	Suite 206, 26 East Exchange Street, St. Paul, MN-551011667	Paper Service	No
Henke	Annel	Minnesota Utility Investors	413 Wacouta Street, #230, St. Paul, MN-55101	Paper Service	No
Johnson	Richard	Moss & Barnett	4800 Wells Fargo Center90 South Seventh Street, Minneapolis, MN-55402	Paper Service	No
Jones	J. Vincent	Woods, Fuller, Shultz & Smith P.C.	300 S. Phillips Avenue, Suite 300, P.O. Box 5027, Sioux Falls, SD-57117-5027	Paper Service	No
Larson	Douglas	Dakota Electric Association	4300 220th St W, Farmington, MN-55024	Paper Service	No
Larson	James D.	Auant Energy Services	200 S 6th St Ste 300, Minneapolis, MN-55402	Paper Service	No
Lewis	Elizabeth A.	Woods, Fuller, Shultz & Smith P.C.	300 S. Phillips Avenue, Suite 300, P.O. Box 5027, Sioux Falls, SD-57117-5027	Paper Service	No
Maini	Kavita	KM Energy Consulting LLC	961 N Lost Woods Rd, Oconomowoc, WI-53066	Paper Service	No
Marshall	Paul	Energy CENTS Coalition	823 7th St E, St. Paul, MN-55105	Paper Service	No
Maste	Patrick	Missouri River Energy Services	3724 W. Avera Drive, PO Box 8820, Sioux Falls, SD-57109-8920	Paper Service	No
Means	Valerie	Moss-Barnett	4800 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN-55402	Paper Service	No
Miller	Tim	Missouri River Energy Services	3724 W. Avera Drive, PO Box 8820, Sioux Falls, SD-57109-8920	Paper Service	No
Moratzke	Andrew	Madkai, Crouse and Moore	1400 AT&T Tower, 901 Marquette Ave, Minneapolis, MN-55402	Paper Service	No
Myert	Jerry L.	Izaak Walton League of America	Suite 202, 1619 Dayton Ave., St. Paul, MN-55104	Paper Service	No
Nelson	Jeffrey L.	East River Electric Power Coop.	121 SE First Street, PO Box 227, Madison, SD-57042	Paper Service	No
Nessa	James	Utility Research	P.O. Box 230, Fergus Falls, MN-56538	Paper Service	No
Podratz	Martha	Minnesota Power	30 W Superior S, Duluth, MN-55802	Paper Service	No
Sanct	Steve	N/A	101 Park Circle, Ottertail City, MN-565717003	Paper Service	No
Savelkov	Richard	Felhaber, Larson, Fenlon & Vogt, P.A.	444 Cedar St Ste 2100, St. Paul, MN-55101-2136	Paper Service	No
Schedt	Larry L.	LLS Resources, LLC	12 S 6th St Ste 1137, Minneapolis, MN-55402	Paper Service	No
Schulte	Robert H.	Schulte Associates LLC	15347 Boulder Pointe Road, Eden Prairie, MN-55347	Paper Service	No
Waldene	Carl		213 E. Summit Ave., Fergus Falls, MN-56537-2226	Paper Service	No

Done

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